

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
EUREKA, CA 95501-1865
VOICE (707) 445-7833
FACSIMILE (707) 445-7877

MAILING ADDRESS:
P. O. BOX 4908
EUREKA, CA 95502-4908



W16a

Filed:	July 13, 2000
Hearing Opened:	September 13, 2000
Staff:	Jim Baskin
Staff Report:	July 20, 2001
Hearing Date:	August 8, 2001
Commission Action:	

REVISED STAFF REPORT: APPEAL**DE NOVO HEARING**

APPEAL NO.:	A-1-MEN-00-051
APPLICANT:	Bonham Investment Company
AGENT(S):	Alan R. Block, Bud Kamb
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	Approximately 2½ miles north of the town of Gualala, situated on the west side of County Road No. 526 (former Highway 1), Mendocino County, APNs 144-170-01& 144-140-03.
PROJECT DESCRIPTION:	Boundary line adjustment to re-configure three (3) parcels recognized by Certificate of Compliance #CC 29-98. The existing parcels are ±5.3 (Lot #1), ±21.2 (Lot #2), and ±8.7 (Lot #3) acres in size. As proposed, ±6.35 acres of Lot #2 and ±0.08 acres of Lot #3 would be combined with existing Lot #1, and ±8.43 acres of Lot #2 would be combined with existing Lot 3 resulting in an ±11.66-acre Lot #1, a ±6.4-acre Lot #2, and a ±17.13-acre Lot #3.

APPELLANTS: **Peter Reimueller, Friends of Schooner Gulch**

SUBSTANTIVE FILE: 1) Mendocino County CDB No. 19-2000; and
DOCUMENTS 2) County of Mendocino Local Coastal Program

STAFF NOTES:

1. Continuance from June Agenda.

The Commission opened and continued the *de novo* portion of the public hearing on this permit application at its meeting on June 14, 2001. The Commission continued the hearing and requested that the applicant provide additional information as to the purpose for the lot line adjustment and the effects the adjustment would have on the subsequent development potential of the property.

Since the June hearing, the applicant has submitted such information (see Exhibit No. 9). The applicants' additional information, as well as supplemental analysis by Commission staff on the development potential of the project site pre- and post-adjustment is presented in Findings Sections IV.B.1 & 2 and IV.H (pp. 9, 10, and 37), below.

At the June hearing, the Commission also indicated that they would like its action to include a condition requiring that a deed restriction be recorded that would limit development of visitor serving and accommodation facilities at the 3-parcel site to just one such facility, consistent with Land Use Plan and Zoning designations for the property when the LCP was certified. This revised staff recommendation includes such a condition.

The Commission will re-open the continued public hearing and may vote on the matter at its August 7-10, 2001 meeting.

2. Procedure.

On February 16, 2001, the Coastal Commission found that the appeal of the County of Mendocino's approval of the boundary line adjustment configuring three parcels raised a substantial issue with respect to the grounds on which the appeal had been filed, pursuant to Sections 30603 and 30625 of the Coastal Act and Section 13115 of the Title 14 of the California Code of Regulations. As a result, the County's approval is no longer effective, and the Commission must consider the project *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program (LCP) and is between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with the County's certified LCP and the public access and public recreation policies of the Coastal Act. Testimony may be taken from all interested persons at the *de novo* hearing.

SUMMARY OF STAFF RECOMMENDATION DE NOVO:
APPROVAL WITH CONDITIONS

The staff recommends that the Commission approve with conditions the coastal development permit application for the proposed boundary line adjustment on the basis that, as conditioned by the Commission, the project is consistent with the County of Mendocino certified LCP and the access policies of Chapter 3 of the Coastal Act.

At the Substantial Issue portion of the appeal hearing in February, 2001, the Commission found that the project, as approved by the County, raised a substantial issue with the County's certified LCP standards regarding the protection and provision of public access and recreational opportunities, and the protection of environmentally sensitive habitat areas, and the public access and recreation policies of the Coastal Act.

Since opening the hearing in February on the Substantial Issue determination, the applicant has amended its project description and provided considerable additional information on the effects of the project on coastal resources.

A wetlands assessment was presented to clarify that building sites do exist on all proposed parcels to allow for future development to be located outside of environmentally sensitive areas on the property and allow for requisite buffer areas.

Furthermore, the applicant includes proposals to dedicate several vertical and lateral coastal access easements to offset any impacts of the currently proposed development on coastal access. With the addition of the offers to dedicate public access, the project is consistent with the public access policies of the Coastal Act. A preliminary review of available information concerning prescriptive rights indicates that areas where potential prescriptive rights could potentially have accrued include the northern beachfronts, trail to the beach, and blufftop trails. The applicant is proposing to make offers of dedication for public access easements over significant portions of these areas. As the lot line adjustment entails no physical site development that could directly impact public access, the offers of dedication would protect for public access purposes critical areas where rights of prescriptive public access may have accrued. As the adjusted parcels would be sufficiently large to include feasible building sites where future development would not adversely affect any areas where prescriptive rights of access may have accrued, the project will not adversely affect public access and would provide maximum public access consistent with LCP and Coastal Act policies.

Staff is recommending a number of special conditions to ensure the project's consistency with all applicable policies of the County's certified LCP and the Coastal Act. The principal recommended conditions would require the applicant to submit, for the review and approval of the Executive Director: (1) copies of the recorded offers of dedication of public access easements; and (2) a deed restriction that would limit development of visitor serving and accommodation facilities at the 3-parcel site to one facility.

Since the June 14, 2001 hearing continuance, the applicant's agent have presented information regarding how the lot line adjustment would affect potential development at the project site. This analysis concluded that although the adjustment would result in additional land area being added to the northernmost parcel on which a commercial visitor-serving facility might be developed, the lot line adjustment would not result in a change in the maximum amount of potentially allowable development density (i.e., total number of building sites) at the site compared to that pursuable under the current parcel configuration.

Staff recommends that the Commission find the project, as conditioned, is consistent with the policies contained in the County's certified LCP and the Coastal Act public access and recreation policies.

I. MOTION, STAFF RECOMMENDATION *DE NOVO*, AND RESOLUTION:

Motion:

I move that the Commission approve Coastal Development Permit No. A-1-MEN-00-051 pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development, as conditioned will be in conformity with the certified County of Mendocino LCP, is located between the sea and the nearest public road to the sea and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because there are no further feasible mitigations measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS: See attached.

III. SPECIAL CONDITIONS:

1. Vertical Access Over Viewing Area and Trail to Beach.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and in order to implement the applicant's proposal, the applicant shall submit for the review and approval of the Executive Director, evidence that the applicant has executed and recorded an irrevocable offer to dedicate an easement for public vertical access in accordance with the terms of the Project Description as proposed by the applicant in Exhibit No. 3, except as otherwise modified by these Special Conditions.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require a Commission amendment, approved pursuant to the provisions of 14 CCR § 13166, to this Permit. This requirement shall be reflected in the provisions of the recorded offer.

2. Lateral Access Over Beach.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and in order to implement the applicant's proposal, the applicant shall submit for the review and approval of the Executive Director evidence that the applicant has executed and recorded an irrevocable offer to dedicate an easement for public lateral access in accordance with the terms of the Project Description as proposed by the applicant in Exhibit No. 3, except as otherwise modified by these Special Conditions.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require a Commission permit amendment, approved pursuant the provisions of 14 CCR § 13166. This requirement shall be reflected in the provisions of the recorded offer.

3. Public Rights.

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property. In addition, by acceptance of this permit, the applicant acknowledges that the voluntary offers to dedicate public access do not abrogate the County's or the Commission's abilities under the certified LCP and/or the Coastal Act to consider the effects of future development of the property on public access and the possible need to require additional public access on the property in the future.

4. Removal of Limitations on Use.

The applicant shall record the subject vertical and lateral offers of dedication for public access easements as depicted in the Project Description in Exhibit No. 3, except that the applicant shall strike the provisions of Limitation on Use #2 regarding requirements that the easements be gated

and locked during evening hours. Instead, the easement shall be available for public use during daylight hours only and subject to signage indicating these hours of use.

5. Conditions Imposed By Local Government.

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

6. Recorded Documents Effecting Adjustment of Parcel Boundaries.

Once the deeds, parcel or survey maps, and/or other instruments effecting the adjustment of parcel boundaries authorized by this permit have been recorded, the applicant shall provide confirmed copies of these documents to the Executive Director.

7. Deed Restriction.

- A. This permit is only for the development described in coastal development permit No. A-1-MEN-00-051. By acceptance of this permit, the applicant acknowledges that: (1) any future repair and maintenance activities identified in Title 14, Subchapter 7 of the California Administrative Code involving a risk of substantial adverse environmental impact, including repairs to portions of the existing perimeter fencing and gating; and (2) any future development as defined in Section 20.308.035(D) of the Mendocino County Coastal Zoning Code, including but not limited to a change in the density or intensity of use of land, shall require an amendment to Coastal Development Permit No. A-1-MEN-00-051 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- B. The entire project site encompassing the three adjusted parcels shall be limited to development of only one visitor services and accommodations facility. An LCP amendment specifying which of the three adjusted parcels may be developed with a visitor serving and accommodations facility shall be certified by the California Coastal Commission.
- C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development. The deed restriction shall include legal descriptions of the applicant's entire parcel(s). The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

A. Incorporation of Substantial Issue Findings.

The Commission hereby incorporates by reference the Substantial Issue Findings contained in the Commission staff report and addendum, dated February 2, 2001 and February 12, 2001, respectively.

B. Project History / Background.

The three lots involved in the proposed boundary adjustment were recognized as legal parcels by Certificate of Compliance No. 29-98, issued by the County of Mendocino in 1999 (see Exhibit No. 7). The County's issuance of the Certificate of Compliance occurred six years after the LCP was certified by the Commission in 1993. At the time of the Commission's actions on the LCP, the land use and zoning maps depicted the subject property as consisting of only one parcel for which only one land use and zoning designation, Rural Residential – One Unit Per 5 Acres, with Planned Unit Development and Visitor Accommodations and Services – Inns, Motels, and Hotels, 20 Units Maximum Combining Zones (RR:L-5:PD:*2C) was assigned.

The certificate was issued pursuant to Section 66499.35(a) of the Government Code, indicating that the parcels were legally created under the Subdivision Map Act or a local ordinance. The subject parcels were initially created by patent deeds issued by the Department of Interior's General Land Office during the period of 1870 through 1892. Portions of the original patents were subsequently conveyed for state highway construction purposes and to other private parties. The resulting subject parcels correspond to those lands above the high tide line and lying west of County Road No. 526 comprised as follows (from north to south):

Parcel 1 (APN 144-170-03): The SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 20;
Parcel 2 (western portion of APN 144-170-01): The NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 20; and
Parcel 3 (eastern portion of APN 144-170-01): The NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 20, all located in Township 11 North, Range 15 West, Mount Diablo Base and Meridian.

Certificate of Compliance No. 29-98 was subsequently recorded in Book of Records 1421 at Page 321, Mendocino County Recorders Office on February 9, 1999 (see Exhibit No. 10). As the subject parcels were created prior to the effective date of Proposition 20, the Coastal Initiative, no coastal development permit was required to create the existing parcels.

On October 27, 2000, the Coastal Permit Administrator for the County of Mendocino approved Coastal Development Boundary Line Adjustment #19-2000 (CDB #19-2000) for the subject development. The decision of the Coastal Permit Administrator was not appealed at the local level to the County Board of Supervisors. The County attached to its coastal permit a number of special conditions, including requirements that new deeds describing the parcels' perimeter

boundaries as adjusted be recorded. In addition, the recorded deeds were required to contain notes stating that: (1) the Visitor Accommodations and Services – Inns, Hotels, Motels, 20 Units Maximum (*2C) combining zone designation is restricted to adjusted Parcel 1; (2) delineation of the boundaries of sand dunes and riparian vegetation occurring on the property as identified within the botanical survey prepared for the project shall be a requirement of future development on adjusted Parcel 1; (3) future development on adjusted Parcel 3 shall require the completion of a botanical survey to identify any environmentally sensitive habitat areas (ESHAs) that may occur on the parcel; (4) future development on adjusted Parcels 1 and 3 will be subject to the restrictions for protecting ESHAs identified by the botanical surveys; (5) future development of any of the adjusted parcels shall be subject to the policies and development criteria for highly scenic areas as set forth in the LUP and Coastal Zoning Code; and (6) dedication of public access and parking as depicted on LUP maps may be required of future development of the adjusted parcels.

On November 9, 2000, the County sent its Notice of Final Action on the permit pursuant to Coastal Act Section 30603(d) containing the requisite information identified in Section 13571 of the Commission's administrative regulations until June 27, 2000. The Notice of Final Action was received by Commission staff on November 13, 2000. On November 13, 2000, the project was appealed by Peter Reimuller, Friends of Schooner Gulch. The appeal cited numerous inconsistencies between the project as approved by the City and the policies of the City's certified LCP and the coastal access and recreational policies of the Coastal Act. On February 16, 2001, the Commission found that a Substantial Issue had been raised with regard to the consistency of the project as approved and the applicable policies of the LCP and Coastal Act concerning: (1) investigations for potential prescriptive rights of public access; and (2) the protection of environmentally sensitive habitat areas.

The Commission first continued the *de novo* portion of the appeal hearing so that the applicant could provide additional information relating to the substantial issues. A wetlands assessment and information relating to the history of use of the property and the owners' efforts to manage public access across the parcel was provided. In addition, the applicant subsequently amended the project to include offers to dedicate vertical and lateral public access facilities on a portion of the project site. During the continuance, Commission staff also conducted a preliminary review of available historic and aerial-photographic information relating to public access at the site. The June 14, 2001 portion of the hearing on the *de novo* review of the appeal was subsequently continued to allow the applicant to provide additional information about the development potential of the site.

C. Project and Site Description.

1. Project Setting

The three parcels involved in the proposed boundary line adjustment are located on the west side of County Road No. 526 (former alignment of Highway 1), approximately 2½ miles north of the unincorporated town of Gualala. The subject property is approximately 35 acres and encompasses much of the landform known as Bourns Landing. The site consists of a gentle

seaward sloping terrace terminating in several headland bluffs rimmed for more than a mile by steep cliffs that drop roughly 50 feet to the ocean. The north end of the property includes Cook's Beach, a small sandy crescent-shaped inlet situated at the mouth of Big Gulch Creek (Glennen Gulch). In addition to Cook's Beach, the property is bounded by several smaller pocket beaches, accessible only at low tide or by boat (see Exhibit No. 2).

The parcels are generally open in character with a plant covering of upland grasses and ruderal forbs including, lupines (Lupinus sp.), swordfern (Polystichum munitum), yarrow (Achillea borealis), buckwheat (Eriogonum latifolium), sow thistle (Sonchus oleracea), beach strawberry (Fragaria chiloensis), wild rose (Rosa gymnocarpa), velvetgrass (Holcus lanatum), and ripgut brome (Bromus diandrus). Several brushy patches of coyotebrush (Baccharis pilularis), bishop pine (Pinus muricata), wax-myrtle (Myrica californica), and coast silktassel (Garrya elliptica) lie across Parcels 2 and 3 in linear thickets, as does a windrow of Monterey cypress (Cupressus macrocarpa) in the northeast corner of Parcel 2. The northern portion of Parcel 1 tapers down to a relatively narrow band of land comprising the densely vegetated riparian corridor between the old highway and Cook's Beach. Typical plant cover in this area includes, red alder (Alnus rubra), Douglas-fir (Pseudotsuga menziesii), California blackberry (Rubus ursinus), salal (Gaultheria shallon), and wild cucumber (Marah oreganus). Hydrophytic vegetation found in areas on Parcel 3 include: hedge nettle (Stachys sp.), iris-leaved rush (Juncus xiphioides), tall flatsedge (Cyperus eragrostis), tall coastal plantain (Plantago subnuda) and giant horsetail (Equisetum telmateia).

Two of the three parcels are vacant, with structural remnants of the former Mar-Lyn Planing Mill remaining on existing Parcel 2 (adjusted Parcel 3). These mill relicts include the former mill manager's cabin, now extensively renovated into a modest single-family residence, and a former shop building that has been modified into a garage/outbuilding. In addition to these improvements, several areas on the site have been graded and cleared for log decks or contain the remains of concrete foundations for the mill's water tank and saw works.

The project site lies within the LCP's Iversen Road to Sonoma County Line Planning Area. All three parcels are planned and zoned Rural Residential – 1 Unit Per 5 Acres, with Planned Unit Development and Visitor Accommodations and Services – Inns, Motels, Hotels, 20 Units Maximum Combining Districts (RR:L-5:PD:*2C) (see Exhibit Nos. 4 and 5). As noted previously, the Land Use Plan and Zoning designations were applied prior to County action on the Certificates of Compliance, at a time when the County believed the subject property consisted of just one parcel.

The subject property is within a highly scenic area as designated on the Land Use Map. With the exception of the residence and accessory structure on Parcel 3, the parcels are largely undeveloped. The project site is a gently seaward-sloping uplifted marine terrace with scattered tree and brush cover. Topographic relief is limited to several minor rises and broad swales of less than ten feet in elevation difference. The western edge of the property consists of an ocean blufftop with steep cliffs that drop roughly 50 feet to the ocean. From County Road No. 526 (former alignment of Highway One), dramatic views are afforded across the northern and

southern portions of the property to the ocean and the headlands from Fish Rock on the north to Robinson Point to the south.

Parcel 1, the first parcel involved in the boundary line adjustment (APN 144-170-03), is a roughly triangular shaped 5.3±-acre lot that comprises the northern third of the Bourns Landing terrace together with the narrow band of riparian forest between the county road and Cook's Beach. The parcel also includes Cook's Beach and several other pocket beaches. The roughly 3-acre bluff-top portion of the parcel is generally flat open grassland affording views of the ocean from the adjacent county road and along a short segment of Highway One.

Parcel 2, the second parcel involved in the boundary line adjustment (western portion APN 131-010-12), currently covers approximately 21.2 acres and borders the southern boundary of the first parcel. The second parcel extends another approximately 1,000 feet farther to the south and includes most of the Bourns Landing coastal terrace pasture. Given the depth of this parcel and the presence of mature vegetation, views from the adjacent county road are limited to distant horizon blue-water vistas. The western perimeter of Parcel 2 forms two prominent headlands, the northerly one comprises a broad open area, while its southern companion is more craggy, connected to the remainder of the terrace by only a narrow, actively eroding neck of blufftop. This headland was the site of the former mill's "teepee burner" incinerator.

Parcel 3, the southerly-most lot involved in the boundary line adjustment (eastern portion APN 131-010-12), is currently an 8.7-acre area lying along the eastern side of Parcel 2. This parcel comprises the southern flank of the Bourns Landing and is crossed by the main access road to the residence on Parcel 2. In addition to having topography and cover similar to that found on Parcel 2, the parcel is crossed by a drainage course running roughly parallel to the access drive. Views across this parcel from the adjacent county road are generally oriented to the south and southwest and include the offshore stacks of Bourns Rock and Robinson Reef.

2. Project Description

The proposed boundary line adjustment would adjust the parcels in a way such that significant portions of Parcel 2 would be added to the adjoining lots roughly doubling the existing sizes of Parcels 1 and 3 to 11.66 acres and 17.13 acres, respectively. Parcel 2 would be reduced in size by over two-thirds, resulting in a relatively narrow, wedge-shaped 6.40-acre lot (see Exhibit No. 3). According to the applicant's agent (see Exhibit No. 9), there are two reasons for the boundary adjustment. First, the applicant desires to configure the parcels such that additional land area is provided for future development of additional parking and/or recreational uses for a visitor serving facility on the northernmost parcel of the property. Second, the adjustment would place those portions of the middle parcel containing the ashes of the deceased spouse of the owner of the Bonham Investment Company on the southernmost parcel where the applicant currently owns a home. No development other than the boundary line adjustment is currently proposed.

After the February hearing on the Substantial Issue determination, the applicant revised the original project to include the following offers of dedication for several coastal access easements within the project description:

- (1) A ten (10) foot wide vertical easement located on Lot 1 which will provide both access to the proposed viewing platform, as well as down to the Cooks Beach. The easement shall be ambulatory to address topographical and safety constraints, avoid erosion and allow safe passage in perpetuity. The easement area and its improvements shall be relocated further inland over time as needed so that no part of the easement or improvements are located seaward of the blufftop;
- (2) A viewing platform easement approximately 20 feet by 20 feet, which will be located on the bluff top overlooking the ocean on Lot 1 immediately adjacent to the vertical easement. The easement shall be ambulatory to address topographical and safety constraints, avoid erosion and allow safe use in perpetuity. The easement area and its improvements shall be relocated further inland over time as needed so that no part of the easement or improvements are located seaward of the blufftop; and
- (3) A lateral access across the beach on Lot 1 which will extend from the mean high tide line to the toe of the bluff, which is understood to be ambulatory.

These proposed easements and the conditions under which the offers would be recorded and public access use allowed are further discussed in the following section.

D. Public Access and Recreation.

1. Summary of Coastal Act and LCP Provisions

a. Coastal Act Access Policies

Projects located between the first public road and the sea within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the certified LCP. Coastal Act Sections 30210, 30211, 30212, and 30214 require the provision of maximum public access opportunities, with limited exceptions.

Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 states, in applicable part:

- (a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*
 - (1) *It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
 - (2) *Adequate access exists nearby, or,*
 - (3) *Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Section 30214 states:

- (a) *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*
 - (1) *Topographic and geologic site characteristics.*
 - (2) *The capacity of the site to sustain use and at what level of intensity.*
 - (3) *The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
 - (4) *The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*
- (b) *It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.*

- (c) *In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.*

b. LCP Provisions

LUP Policy 3.6-5 states:

Acquisition methods such as bequests, gifts, and outright purchases are preferred by the County when obtaining public access from private landowners. Other suitable voluntary methods such as a non-profit land trust may be helpful and should be explored in the future. If other methods of obtaining access as specified above have not occurred, developers obtaining coastal development permits shall be required prior to the issuance of the coastal development permit to record an offer to dedicate an easement for public access purposes (e.g. vertical, lateral, parking areas, etc.) where it is delineated in the land use plan as a condition of permit approval. The offer shall be in a form and content approved by the Commission and shall be recorded in a manner approved by the Commission before the coastal development permit is issued. [emphasis added]

LUP Policy 3.6-27 states:

No development shall be approved on a site which will conflict with easements acquired by the public at large by court decree. Where evidence of historic public use indicates the potential for the existence of prescriptive rights, but such rights have not been judicially determined, the County shall apply research methods described in the Attorney General's 'Manual on Implied Dedication and Prescriptive Rights.' Where such research indicates the potential existence of prescriptive rights, an access easement shall be required as a condition of permit approval. Development may be sited on the area of historic public use only if: (1) no development of the parcel would otherwise be possible, or (2) proposed development could not otherwise be sited in a manner that minimizes risks to life and property, or (3) such siting is necessary for consistent with the policies of this plan concerning visual resources, special communities, and archaeological resources. When development must be sited on the area of historic public use an equivalent easement providing access to the same area shall be provided on the site. [emphasis added]

Note: This policy is implemented verbatim at Section 20.528.030 of the Coastal Zoning Code.

Section 4.12-15 of the LUP's Coastal Access Inventory states:

Cooks Beach

Location: 1.3 miles south of Anchor Bay.

Ownership: Private.

Characteristics: A 500-foot sandy beach on south side of Glennen Gulch.

Connects to Bourns Landing bluff top.

Policy: 4.12-15: Offers to dedicate easements for vertical and lateral shoreline access shall be acquired for that area delineated on the Land Use Map consistent with policy 3.6-5.

Section 4.12-16 of the LUP's Coastal Access Inventory states:

Bourns Landing

Location: 1.5 miles south of Anchor Bay.

Ownership: Private.

Potential Development: Trail along open bluff with long views of coast and shoreline access at small beach; connects to Cooks Beach.

Policy 4.12-16: Offers to dedicate easements for a blufftop trail and shoreline access shall be acquired for that area delineated on the land use plan map consistent with policy 3.6-5.

In its application of these policies, the Commission is limited by the need to show that any denial of a permit application based on this section, or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

2. Discussion

Dedicated Public Access Facilities

As proposed under the amended project description contained in Exhibit No. 3, the applicant would offer to dedicate three public accessways as part of the project:

- (1) A ten (10) foot wide vertical easement located on Lot 1 which will provide both access to the proposed viewing platform, as well as down to the Cooks Beach. The easement shall be ambulatory to address topographical and safety constraints, avoid erosion and allow safe passage in perpetuity. The easement area and its improvements shall be relocated further inland over time as needed so that no part of the easement or improvements are located seaward of the blufftop;
- (2) A viewing platform easement approximately 20 feet by 20 feet, which will be located on the bluff top overlooking the ocean on Lot 1 immediately adjacent to the vertical easement. The easement shall be ambulatory to address topographical and safety constraints, avoid erosion and allow safe use in perpetuity. The easement area and its

improvements shall be relocated further inland over time as needed so that no part of the easement or improvements are located seaward of the blufftop; and

- (3) A lateral access across the beach on Lot 1 which will extend from the mean high tide line to the toe of the bluff, which is understood to be ambulatory.

The above accessways would be dedicated in a manner consistent with the standards typically applied by the Commission and including the following eight dedication and recordation procedures:

- (1) The offers to dedicate would be recorded as “irrevocable offers to dedicate” against the property in a form and content deemed acceptable to the Executive Director of the Coastal Commission;
- (2) The recorded documents shall provide that the offers of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property;
- (3) The recorded documents shall include legal descriptions of both the entire project site and the area of dedication;
- (4) The documents shall be recorded free of prior liens and any other encumbrances which the Executive Director of the California Coastal Commission determines may affect the interest being conveyed;
- (5) The offers to dedicate shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording;
- (6) The offers to dedicate shall require that any future development that is proposed to be located either in whole or in part within the areas described in the recorded offers to dedicate shall require a Commission amendment, approved pursuant to the provisions of 14 CCR Sec 13166;
- (7) The offers shall be submitted for the review and approval of the Executive Director of the Commission prior to recordation and prior to issuance of the coastal development permit; and
- (8) Upon the opening of the easements for public use an acknowledgement sign or monument will be erected on the property by the accepting public entity or private association, in a visible location, which shall provide that the Bonham Family has dedicated the subject properties for public use.

The offers, as proposed, would be subject to the four following limitations on use:

- (1) The easements offered for dedication, however, would only be available for public use, after being accepted by a public entity or private association who would be responsible for all maintenance of the dedicated easements as well as liable for any and all damages in case of any injury. Appropriate insurance and/or immunity would have to be evidenced prior to the easements being open for public use; and
- (2) The easements should be available for public use during day light hours only, and subject to being gated and locked during the evening hours. The hours of operation, however, may be expanded in conjunction with the future development proposed for the site, if deemed reasonably necessary by the Commission;
- (3) No lighting of any type will be placed and/or constructed on the proposed easement areas; and
- (4) No toilet facilities will be placed and/or constructed on the proposed easement areas, however the placement of toilet facilities on the property may be permitted in the future in conjunction with future development of the site, if deemed reasonably necessary by the Commission.

In addition, the applicant acknowledges that the voluntary offers to dedicate public access do not abrogate the County's or the Commission's abilities under the certified LCP and/or the Coastal Act to consider the effects of future development of the property on public access and the possible need to require additional public access on the property in the future (see Exhibit No. 3).

To approve the proposed project, the Commission must find the project to be consistent with the public access policies outlined in Section 30210, 30211, 30212, and 30214 of the Coastal Act and LUP Policies 3.6-5 and 3.6-27, and Coastal Zoning Ordinance Section 20.528.030 listed above. The project's consistency with each of these policies is described below.

a. Consistency with Section 30211 of the Coastal Act

Section 30211 of the Coastal Act states, in part, that "development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization." Applicants for coastal development permits which involve development between the first public road and the sea must demonstrate that their proposed developments are consistent with the Coastal Act and LCP, including the requirements of Section 30211 of the Act, LUP Policy 3.6-27, and Section 20.528.030 of the Coastal Zoning Ordinance. In implementing these policies, the permitting agency, the Commission and the local government, must consider whether a proposed development will interfere with or adversely affect an area over which the public has obtained rights of access to the sea. The agency must determine whether there is substantial evidence to support the conclusion that the area has been impliedly dedicated to public use only if the agency finds the proposed development will interfere with an impliedly dedicated public use.

Because the authority to make a final determination on whether such a dedication has taken placed resides with the courts, both the Commission's Legal Division and the Attorney General's Office have recommended that agencies dealing with implied dedication issues use the same analysis as the courts. Essentially, this requires the agencies to consider whether there is substantial evidence indicating that the requisite elements of an implied dedication are present. The agencies also must consider whether the applicant has demonstrated that the law prevents the area from being impliedly dedicated, even if the requisite elements of implied dedication have otherwise been met. Furthermore, LUP Policy 3.6-27 expressly provides that where evidence of historical public use indicates the potential for the existence of prescriptive rights, but such rights have not been judicially determined, the County shall apply research methods described in the Attorney General's "Manual on Implied Dedication and Prescriptive Rights."

A right of access through use is, essentially, an easement over real property which comes into being without the explicit consent of the owner. The acquisition of such an easement by the public is referred to as an "implied dedication." The doctrine of implied dedication was confirmed and explained by the California Supreme Court in Gion v. City of Santa Cruz (1970) 2 Cal.3d 29. The right acquired is also referred to as a public prescriptive easement, or easement by prescription. This term recognizes the fact that the use must continue for the length of the "prescriptive period," before an easement comes into being.

The rule that an owner may lose rights in real property if it is used without consent for the prescriptive period derives from common law. It discourages "absentee landlords" and prevents a landowner from a long-delayed assertion of rights. The rule establishes a statute of limitations, after which the owner cannot assert formal full ownership rights to terminate an adverse use. In California, the prescriptive period is five years.

For the public to obtain an easement by way of implied dedication, it must be shown that:

- 1) The public has used the land for a period of five years or more as if it were public land;
- 2) Without asking for or receiving permission from the owners;
- 3) With the actual or presumed knowledge of the owner;
- 4) Without significant objection or bona fide attempts by the owner to prevent or halt the use; and
- 5) The use has been substantial, rather than minimal.

In general, when evaluating the conformance of a project with 30211, the Commission or the applicable local government cannot determine whether public prescriptive rights actually do exist; rather, that determination can only be made by a court of law. However, the Commission or the applicable local government is required under Section 30211 to prevent development from interfering with the public's right of access to the sea where acquired through use or legislative authorization. As a result, where there is substantial evidence that such rights may exist, the Commission or the applicable local government must ensure that proposed development would not interfere with any prescriptive rights which may exist.

In the present case, the applicant has proposed public access as part of the project. The applicant elected to grant such access to eliminate the potential that proposed development would interfere with any public access rights which may exist. Consequently, the Commission will evaluate whether the project as proposed would interfere with potential prescriptive rights of public access that might exist on the property. If the proposed project would not interfere with any potential prescriptive rights of public access that might exist, the project would be consistent with Section 30211 of the Coastal Act and LUP Policy 3.6-27 and Coastal Zoning Ordinance 20.528.030 because any public rights of access to the sea acquired through use would be protected. Therefore, if the Commission determines that the proposed development would not interfere with potential prescriptive rights of public access that might exist on the property, the Commission need not do an exhaustive evaluation to determine if substantial evidence of an implied dedication exists because regardless of the outcome of the investigation, the Commission could find the project consistent with Section 30211.

b. Potential for Development to Interfere with Public's Right of Access

The project site occupies the large uplifted marine terrace known as Bourns Landing. The property is crossed by several well-worn trails running along the blufftop margins and descending to Cook's Beach through the riparian corridor on Parcel 1. While these features indicate that some access use has occurred along the blufftop and down to the beach, the period in which the access use has occurred, the casual or continuous pattern of access use, and the degree to which such use has been substantial is not fully known.

In a preliminary investigation for evidence that prescriptive rights of public access might exist on the subject property, the Commission's staff encountered several historical references to the site as a significant public commercial site in the late 1800s to early 1900s. In "*Qh-awal-li*, 'water coming down place,' A History of Gualala, Mendocino County, California," author Annette White Parks states:

Even the drab language of deeds (1881) cannot help but convey some sense of the bustle and lively business going on by this time, that made of Bourn's Landing not just Gualala's central shipping point, but a place where the town and countryside came together, a community gathering spot. For a good fifty years, this was true.

Following the death in 1905 of Morton Bourn, the man after which the landform is named, author Parks writes:

Bourn's Landing, though, still had some distance to go, and here the century moved from nineteenth to twentieth without obvious change. Trains and ships came and went, so did wagons and buildings and people. The girls who stood on the point waving to sailors took on some new faces, as did the men swapping stories in the saloon and the horses stomping impatiently in the shop of the smith. People walked all the way up from Gualala to go to the dances that sometimes took place at the Landing on a Saturday night. ...The Landing had houses, too, mainly for use by the people who worked there. The teacher of Seaside School

lived in one painted bright red... After lessons, class convened to the cookhouse, where a Chinese chef named Can loaded hungry kids up with cookies, donuts - whatever he had. By this time, too, the three story building which had once been a hotel was known as Bourn's Landing Store.

Although these historical references suggest a long period of substantial use in the distant past, the evidence does not by itself establish potential prescriptive rights of public access. For example, the information does not show that the public use was adverse or without the permission of the property owner. In addition, the evidence does not indicate precisely where on the property use that might be considered prescriptive occurred.

In addition to these historical references, the Commission staff also examined aerial photographs from 1979 through 1993. All of the photographs examined from this period show evidence of trails to the beach and along the bluffs. No other trails over other areas of the site were noted. Thus, the evidence derived from the aerial photography analysis suggests potential prescriptive use along the bluff edge, the pathway to the beach, and along the beach itself.

However, it is not a certainty whether these trails resulted from use that is prescriptive or not. According to a declaration submitted by the current property owner (John Bonham, March 13, 2001), the trails developed solely from the activities of the owners of the property rather than from the access use by the public at large. Mr. Bonham states that when the land was purchased in 1961 from the Mar Lynn Planning Mill, a sawmill operation which operated from the late 1940s, the mill site was completely fenced. The owner contends that the trails were worn by horses that were boarded on the fenced and gated property from 1968 through 1997.

There are some limitations that prevent property from being impliedly dedicated, even if the requisite elements of implied dedication have otherwise been met. The court in Gion explained that for a fee owner to negate a finding of intent to dedicate based on uninterrupted use for more than five years, he must either affirmatively prove he has granted the public a license to use his property or demonstrate that he made a bona fide attempt to prevent public use. Thus, persons using the property with the owner's "license" (e.g., permission) are not considered to be a "general public" for purposes of establishing public access rights. Furthermore, various groups of persons must have used the property without permission for prescriptive rights to accrue. If only a limited and definable number of persons have used the land, those persons may be able to claim a personal easement but not dedication to the public. Moreover, even if the public has made some use of the property, an owner may still negate evidence of public prescriptive rights by showing bona fide affirmative steps to prevent such use. A court will judge the adequacy of an owner's efforts in light of the character of the property and the extent of public use.

Section 813 of the Civil Code, adopted in 1963, allows owners of property to grant access over their property without concern that an implied dedication would occur even if they did not take steps to prevent public use of the land. Section 813 provides that recorded notice is conclusive evidence that subsequent use of the land, during the time that such notice is in effect, by the public for any use or for any purpose is permissive.

Section 1008 of the Civil Code provides that no use by any person or persons, no matter how long continued, of any land, shall ever ripen into an easement by prescription, if the owner of such property posts at each entrance to the property or at intervals of not more than 200 feet along the boundary a sign reading substantially as follows: "Right to pass by permission, and subject to control, of owner: Section 1008, Civil Code."

As stated in the owners declaration, the property has been continually fenced and gated since its purchase in 1961. Because of vandalism to the fences, on October 2, 1981, the owners recorded a "Notice of Permissive Use Pursuant to California Civil Code Section 813." According to the applicant, this instrument intended to allow members of the public to conditionally use the property for access to the beach and/or blufftop without subsequently incurring a prescriptive right to the public use. Notification signage pursuant to Civil Code Section 1008, informing the public that rights of passage across the land were henceforth by permission, subject to the control of the owners, was subsequently placed at the main entrance to the property. In addition, "No Trespassing" and "Keep Out" signs were also posted at the northern end of the property at the entry point to the trail access to Cook's Beach.

The courts have recognized the strong public policy favoring access to the shoreline, and have been more willing to find implied dedication for that purpose on shoreline properties than when dealing with inland properties. A further distinction between inland and coastal properties was drawn by the Legislature subsequent to the Gion decision when it enacted Civil Code Section 1009. Civil Code Section 1009 provides that if lands are located more than 1,000 yards from the Pacific Ocean its bays, and inlets, unless there has been a written, irrevocable offer of dedication or unless a government entity has improved, cleaned, maintained the lands, the five years of continual public use must have occurred prior to March 4, 1972. In this case, the subject site is within 1,000 yards of the sea; therefore the required five-year period of use need not have occurred prior to March of 1972 in order to establish public rights in the property.

The available preliminary evidence suggests that the only portions of the project site where prescriptive rights of access may have accrued are over the trails along the bluff edge and to and along the beaches at the northern end of the property. Even so, it is not clear that the use has been prescriptive, given what the owner has stated regarding their previous use of the land, including the keeping of horses at the site. Furthermore, because recordation of the Notice of Permissive Use was recorded in 1981, all public use of the property recognizable as evidence of implied dedication must have occurred before the recordation date. Of the available information regarding public use of the site for the period preceding 1981, it is either quite dated, inconclusive, or undocumented.

However, the project as proposed would not affect any potential prescriptive rights of access. Firstly, the project has been amended to include offers of dedication for public access. These offers cover the most probable locations where prescriptive rights may have accrued and that could most easily be adversely affected by future development facilitated by the subject lot line adjustment (i.e., trail to Cooks Beach, northern beachfront, and blufftop vista point). The areas offered for dedication are the most critical portions of the area where potential implied dedication may have occurred as they provide the most easily accessible points from the public

road. In addition, these areas are located at the narrowest portion of the land area of the property, where a future proposed driveway, gate, fence, or other accessory structure could very easily obstruct public access. By recording the offers of dedication, this area of potential prescriptive rights will be protected for public access use.

Furthermore, in this case, the proposed development is limited to a boundary line adjustment and no physical development would take place. The parcels as adjusted would be large enough that, even if substantial evidence of prescriptive rights of public access along the trails on the bluff edge and down to Cook's Beach could be established, future development could be sited where it would not adversely affect such access. The Commission notes that the parcel adjacent to Cook's Beach would actually be expanded in size by the proposed boundary line adjustment, further ensuring that future development could be sited where it would not adversely affect potential prescriptive rights of public access. Therefore, the proposed development would not conflict "with easements acquired by the public at large by court decree" nor with potential prescriptive easements for trails identified on site that may be acquired by the public at large by court decree. Therefore, the Commission finds that the proposed project is consistent with LUP Policy 3.6-27.

However, the applicant has included several provisions under which the easement dedications are being offered. These "criteria for recordation" and "limitations on use" are generally benign with regard to protection of potential prescriptive rights, but may result in interference with the public's right of access by creating impediments to acceptance of the dedications. Specifically, Limitation on Use #2 states:

The easements shall be available for public use during day light hours only, and subject to being gated and locked during the evening hours. The hours of operation, however, may be expanded in conjunction with future development proposed for the site, as deemed reasonable and necessary by the Commission.

This condition on the acceptance of the offers of dedication could effectively reduce the number of qualified parties who can accept the offers to dedicate the easements to those possessing maintenance and caretaking staff capable of locking and unlocking the gates at sunrise and sunset. The Commission finds this responsibility to constitute a major hindrance to acceptance of the easements that could effectively nullify the purpose for the offers of dedication. Accordingly, the Commission attaches Special Condition No. 4. Special Condition No. 4 requires the applicant to remove this use limitation regarding requirements that the easements be gated and locked during evening hours from the conditions for acceptance of the offers of dedication for public access. The condition provides that the easement shall be available for public use during daylight hours only and subject to signage indicating these hours of use. As so conditioned, the project can be found to be consistent with Section 30211 as the development would not interfere with any potential public's right of access to the sea where acquired through use or legislative authorization.

Thus, with the proposed offers of dedication, the proposed development as conditioned would not adversely affect any potential prescriptive rights of public access that may exist. Therefore,

the Commission need not perform an exhaustive evaluation to determine if substantial evidence of an implied dedication exists because, regardless of the outcome of the investigation, the Commission could find the project as conditioned consistent with Section 30211 of the Coastal Act, LUP Policy 3.6-27, and Coastal Zoning Ordinance Section 20.528.030, as any public rights of access to the sea acquired through use would be protected consistent with these provisions.

c. Consistency with Section 30212

Section 30212 of the Coastal Act states that public access from the nearest public roadway to the shoreline and along the coast need not be provided in new development projects where: (1) it would be inconsistent with the protection of fragile coastal resources; or (2) adequate access exists nearby. However, the Commission notes that Section 30212 of the Coastal Act is a separate section of the Act from Section 30211, the policy that states that development shall not interfere with the public's right of access to the sea when acquired through use. The limitations on the provision of new access imposed by Section 30212 do not pertain to Section 30211. Even if public prescriptive rights of access have accrued over trails that pass through environmentally sensitive habitat areas or in areas near other public access, Section 30211 requires the development not be allowed to interfere with those rights.

Moreover, in the absence of the offered accessways, adequate access does not exist nearby. Thus, without the grant of access easement proposed by the applicant, pedestrian public access to this section of the coast from the area would be blocked.

Therefore, the Commission finds that the offers to dedicate public access easements proposed by the applicant are consistent with Section 30212 of the Coastal Act, as the access will be provided consistent with the protection of coastal resources and adequate access does not exist nearby.

d. Consistency with Section 30210

Section 30210 of the Coastal Act states that the maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with the public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. As proposed by the applicant, and as further conditioned below by Special Condition Nos. 1 and 2, which collectively protect the public's right of access where acquired through use, both now and into the future, the Commission finds that the project is consistent with Section 30210 of the Coastal Act.

e. Conclusion

Wherever possible, it is advantageous to secure either an offer to dedicate an easement for public access or an actual dedication and recordation of public access rights. Unless this is done, the controversy over implied dedication is merely postponed, and passage of time may complicate problems of proof. Even where the evidence of implied dedication is clear, the public is best served by recordation of an actual dedication which clarifies the rights of everyone.

To ensure that the proposed project will not interfere with any implied dedication of access which may have occurred, both now and into the future, the Commission attaches Special Condition Nos. 1 through 5.

Special Condition No. 1 requires the applicant to provide evidence for the review and approval of the executive Director that their offer to dedicate an easement for vertical public access over the property has been properly recorded prior to issuance of the coastal development permit.

Special Condition No. 2 requires the applicant to provide evidence for the review and approval of the Executive Director that their offer to dedicate an easement for lateral public access over the property has been properly recorded prior to issuance of the coastal development permit.

Special Condition No. 3 protects the public's rights of access over the property since public prescriptive rights have not been adjudicated by a court of law at this time. Special Condition No. 3 states that by acceptance of the permit, the applicant agrees that the issuance of the permit and the completion of the development does not prejudice any subsequent assertion of any public rights of access to the shoreline (prescriptive rights), and that approval by the Commission of this permit shall not be used or construed, prior to the settlement of any claims of public rights, to interfere with the rights of public access to the shoreline acquired through use which may exist on the property.

Lastly, Special Condition No. 4 requires the applicant to remove Limitation on Use #2, regarding requirements that the easements be gated and locked during evening hours as to do so would create a serious impediment to acceptance of the offers.

In conclusion, although there is an unresolved question as to the existence of public prescriptive rights, the applicants offers to dedicate easements for public access protects any potential rights of public access where acquired through use. The proposed project as conditioned is consistent with Section 30211 of the Coastal Act and LUP Policy 3.6-27 because, whether or not a court of law were to adjudicate that existing use of the site for coastal access constitutes a public prescriptive right, for the reasons stated above, the Commission finds that the proposed development would not interfere with such access rights.

E. Adequacy of Water Supply and Septic Capacity.

Several policies within the County's LCP set forth requirements for assessing and demonstrating that an adequate water supply and means of disposing of waste from new development will be available.

1. Summary of LCP Provisions

LUP Policy 3.8-1 states the following in applicable part:

Highway 1 capacity, availability of water and sewage disposal system and other know planning factors shall be considered when considering applications for development permits.

LUP Policy 3.8-7 states:

Land divisions and subdivisions creating new parcels or building sites or other proposed development, including lot line adjustments, mergers and issuance of conditional certificates of compliance shall be approved only where a community sewage disposal system with available capacity exists and is obligated to provide service or where a satisfactory site for a sewage system exists. Leach field approval shall require satisfactory completion of a site evaluation on the site of each proposed septic system. A leach field shall not be located where the natural grade exceeds 30 percent slope or where there is less than 5 feet of soil below the trench if natural grade exceeds 20 percent slope. This septic system policy is consistent with the Minimum Guidelines for the Control of Individual Wastewater Treatment and Disposal Systems adopted by the Regional Water Quality Control Board on April 17, 1979. [emphases added]

LUP Policy 3.8-9 states, in applicable part:

Approval of the creation of any new parcels shall be contingent upon an adequate water supply during dry summer months which will accommodate the proposed parcels, and will not adversely affect the groundwater table of contiguous or surrounding areas... Commercial developments and other potential major water users that could adversely affect existing surface or groundwater supplies shall be required to show proof of an adequate water supply, and evidence that the proposed use shall not adversely affect contiguous or surrounding water sources/supplies. Such required proof shall be demonstrated prior to approval of the proposed use.

Section 20.532.095 in part states that:

The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:

...
(2) The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities...

2. Discussion

As noted previously, the proposed project is a lot line adjustment between three existing parcels and does not include any physical development on the ground. No development that would generate a need for water and other services is proposed in the current application. However, as the certified LCP would allow at least one residence on each of the adjusted parcels as a

principally permitted use, the capacity of the parcels as adjusted to support such uses needs to be considered in conjunction with the coastal development permit for the boundary adjustment.

The LCP policies cited above require that the approving authority consider whether an adequate water source to serve proposed development is available before approving a coastal development permit. Policy 3.8-1 states that availability of water shall be considered when considering applications for development permits. Policy 3.8-9 states that the creation of any new parcels shall be contingent upon demonstration of an adequate water supply to accommodate the proposed parcels, and potential major water users shall be required to show proof of an adequate water supply to serve the development prior to approval of the proposed use. Coastal Zoning Ordinance Section 20.532.095 states that the granting of a coastal development permit shall be supported by findings establishing that the proposed development will be provided with adequate utilities. These policies reflect the requirements of Section 30250(a) of the Coastal Act that new development be located in areas able to accommodate it.

Demonstration of Adequate Water Supply

The project site is located within the water service area of the North Gualala Water Company (NGWC). The NGWC has capacity remaining to serve additional users and continues to accept applications for new connections to its water system. Therefore, an adequate water supply is available to accommodate the adjusted parcels, consistent with the requirements of LUP Policy 3.8-1 and 3.8-9 and Coastal Zoning Ordinance Section 20.532.095.

Concerns have been expressed that the NGWC does not have sufficient water to serve all potential users within the service area in the future. These concerns are exacerbated by requirements imposed on the water company by the State Water Resources Control Board (SWRCB) that set certain withdrawal limits from the company's water source during periods of low flow. NGWC holds four permits from the SWRCB covering water diversions from the North Fork Gualala River, Robinson Gulch, Big Gulch, and Fish Rock Creek for supplying the community of Gualala and surrounding parcels, including the project site. The combined rate of diversion granted to the NGWC is 416 cubic-feet-per-second (cfs) with a maximum diversion limitation of 1,730 acre-feet per annum. For the protection of fish and wildlife, the NGWC must bypass watercourse streamflows by a minimum of: (a) 40 cfs during the period of November 15 through February 29, (b) 20 cfs from March 1 through May 31; and (c) 4 cfs from June 1 through November 14. During times when flows are less than the designated amount for a given period, the NGWC must bypass the entire total streamflow.

For many years, various parties have presented concerns before the SWRCB regarding whether the NGWC adequately maintains the required bypass flows. Although SWRCB staff have inspected and found the NGWC to be in compliance with their permits, there is the possibility of noncompliance in future years when flows in the river are less than the bypass requirements (e.g., prior to the onset of winter rains, during the winter and spring months of drought years). In this event, the company would have to reduce its withdrawals from the river. This situation could necessitate that the Company either: (1) build a water storage reservoir in the future so that water withdrawn from the river during high flow periods can be saved for use during low flow periods; (2) find another source of water; (3) apply water conservation measures to reduce the

demand during low flow periods to an extent that future demand will not exceed supplies; or (4) some combination of the above.

As noted above, NGWC still has the existing capacity that can be used by anyone within the service area desiring to connect to the system. LUP Policy 3.8-9 requires that proof of adequate water be demonstrated prior to approval of a proposed major water use. As noted, the current coastal development permit application does not require the creation of any additional parcels or the development of any particular use on any of the parcels to be adjusted. With any coastal development permit application for such future use of any of the parcels, the applicant will have to demonstrate to the County, and the Commission on appeal, that sufficient water is available to serve the particular use proposed in order for the County or the Commission to find consistency with Policy 3.8-9. The review process will ensure that only uses that can be supported by adequate water supply will be developed.

For the reasons stated above, the proposed lot line adjustment is consistent with the provisions of LUP Policy 3.8-1, 3.8-9, and Coastal Zoning Ordinance Section 20.532.095 that address the provision of adequate water to serve the proposed development.

Sewage Disposal System Requirements

Similar to the LUP policies that address domestic water supplies, the LUP policies cited above require that the approving authority consider whether an adequate site to develop an on-site sewage disposal system to serve proposed development is available before approving a coastal development permit. Policy 3.8-7 states, in applicable part, that development shall be approved only where a community sewage disposal system is obligated to provide service or where a satisfactory site for a sewage disposal system exists. Coastal Zoning Ordinance Section 20.532.095 states that the granting of a coastal development permit shall be supported by findings establishing that the proposed development will be provided with adequate utilities. Again, these policies reflect the requirements of Section 30250(a) of the Coastal Act that new development be located in areas able to accommodate it.

Of the three parcels involved in the lot line adjustment, only one, proposed Parcel 3, is developed with a single-family residence and onsite sewage disposal system. Parcels 1 and 2 are currently vacant. Based upon quantitative sewage disposal system standards stated within the LCP, the findings of the wetlands assessment regarding on site soil characteristics, and Commission staff discussions with staff from the County's Environmental Health Department, there appear to be suitable areas on Parcel 1 and 2 where onsite sewage disposal systems could be developed to adequately serve all future development of these parcels. In general, if a site can be found that: (1) is at least 100 feet from any well, water body, or major break in terrain; (2) is located on ground with less than a 30 percent slope or where there is less than 5 feet of soil below the trench if natural grade exceeds 20 percent slope; and (3) meets established soil depth, texture and percolation rate criteria, the site may be approved for development of an onsite sewage disposal system.

Assuming that information contained in the site assessments regarding how the terrace soils are typically well-drained notwithstanding their dark color indicating otherwise is accurate, there are

several areas on all parcels as proposed to be adjusted where septic systems could conceivably be developed. As described in Findings Section IV.B.1, at 11.66 acres and 6.4 acres respectively, proposed Parcels 1 and 2 contain several sites that are greater than 100 feet from any wells, watercourses, or breaks in terrain. In addition, the grade across the upper terrace portions of the lots range from flat to generally less than 5% slope. Furthermore, based upon the descriptions within the wetlands assessments for the site, the underlying soils appear to be well-drained and of adequate depth and texture to allow for development of onsite sewage disposal systems. Policy 3.8-7 states that any leachfield approval shall require satisfactory completion of a site evaluation on the site of each proposed septic system. Pursuant to this requirement, at the time that owners of the property seek approval to install a septic system leachfield, in conjunction with a specific proposal to build a house, an inn, or other development, such a site evaluation will have to be performed to ensure that the particular location chosen for the leachfield will be adequate to meet the particular demand for sewage treatment that would be generated by the particular development proposed.

As site conditions meet the necessary criteria to provide suitable areas for septic systems for each undeveloped lot, the proposed lot line adjustment is consistent with the requirements of LUP Policy 3.8-1, 3.8-7, and Coastal Zoning Ordinance Section 20.532.095 that satisfactory sites for septic disposal systems exist and that the proposed development will be provided with adequate sewage disposal facilities.

Conclusion

Thus, the Commission finds that the boundary line adjustment as conditioned would assure the adequacy of water supply and septic capacity for all parcels proposed for boundary line adjustment as required by LUP Policies 3.8-1, 3.8-7, 3.8-9, and Zoning Ordinance Section 20.532.095.

F. Protection of Environmentally Sensitive Habitat Areas.

1. Summary of LCP Provisions

LUP Policy 3.1-1 states:

The various resources designations appearing on the land use maps represent the best information available at this time and therefore create a presumption of accuracy which may be overcome only with additional information that can be shown to be a more accurate representation of the existing situation than the information that has been used to determine these boundaries. Such showing shall be done in the context of a minor amendment to the land use plan. [emphasis added]

LUP Policy 3.1-32 states:

Land divisions, including lot line adjustments which are located within Environmentally Sensitive Habitat Area boundaries (which are shown on the

Land Use Maps, and subject to Policy 3.1-1), will not be permitted if: (1) any parcel being created is entirely within an Environmentally Sensitive Habitat Area; or (2) if any parcel being created does not have an adequate building site which would allow for the development of the building site consistent with Policy 3.1-7. [emphasis added]

LUP Policy 3.1-7 states:

(A) A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width. New land division shall not be allowed if will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:

- (1) It shall be sited and designed to prevent impact which would significantly degrade such areas;*
- (2) It shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity; and*
- (3) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*

Section 20.496.015 of the Coastal Zoning Code states, in applicable part:

(A) Determining Extent of ESHA. The Coastal Permit Administrator shall review, with the assistance of land use maps, all permit applications for coastal developments to determine whether the project has the potential to impact an ESHA. A project has the potential to impact an ESHA if:

- (1) *The development is proposed to be located on a parcel or proximate to a parcel identified on the land use plan map with a rare and/or endangered species symbol;*
- (2) *The development is proposed to be located within an ESHA, according to an on-site investigation, or documented resource information;*
- (3) *The development is proposed to be located within one hundred (100) feet of an environmentally sensitive habitat and/or has potential to negatively impact the long-term maintenance of the habitat, as determined through the project review.*

Development proposals in ESHA's including but not limited to those shown on the coastal land use maps, or which have the potential to impact an ESHA, shall be subject to a biological survey, prepared by a qualified biologist, to determine the extent of the sensitive resource, to document potential negative impacts, and to recommend appropriate mitigation measures. The biological survey shall be submitted for the review and approval of the Coastal Permit Administrator prior to a determination that the project application is complete. The biological survey shall be prepared as described in Section 20.532.060, "Environmentally Sensitive Habitat Area – Supplemental Application Procedures..." [emphases added]

Section 20.532.060 of the Coastal Zoning Code establishes states, in applicable part:

Environmentally Sensitive Habitat Area - Supplemental Application Procedures. Additional project information shall be required for development within an Environmentally Sensitive Habitat Area (ESHA) and may be required for any development within five hundred (500) feet of an ESHA if the development is determined to have the potential to impact an ESHA... Additional requirements may include one or more of the following:

- (A) *Topographic Base Map...*
- (B) *Inundation Map...*
- (C) *Vegetation Map...*
- (D) *Soils Map...*
- (E) *Report of Compliance...*

Section 20.532.100 of the Coastal Zoning Code states, in applicable part:

Supplemental Findings. In addition to required findings, the approving authority may approve or conditionally approve an application for a permit or variance within the Coastal Zone only if the following findings, as applicable, are made:

- (A) *Resource Protection Impact Findings.*

- (1) *Development in Environmentally Sensitive Habitat Areas. No development shall be allowed in an ESHA unless the following findings are made:*
- (a) *The resource as identified will not be significantly degraded by the proposed development.*
 - (b) *There is no feasible less environmentally damaging alternative.*
 - (c) *All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted...*

2. Discussion

The above LCP policies provide for the regulation of new development to protect Environmentally Sensitive Habitat Areas (ESHA). The Mendocino County Coastal Zoning Code Section 20.496.010 defines ESHAs as including wetlands and riparian areas and establishes buffers to protect them. Zoning Code Section 20.496.015(A) states that developments that have the potential to impact an ESHA, shall be subject to a biological survey, prepared by a qualified biologist, to determine the extent of the sensitive resource, to document potential negative impacts, and to recommend appropriate mitigation measures. The survey must be approved by the Coastal Permit Administrator prior to a determination that the project application is complete. The biological survey must be prepared as described in Section 20.532.060 and may be required to include a topographic base map, an inundation map, a vegetation map, and a soils map. LUP Policy 3.1-7 and Zoning Code Section 20.496.020 require that buffer areas shall be established adjacent to all environmentally sensitive habitat areas to provide sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. Section 20.496.020 states that the width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development, in which case the buffer can be reduced to not less than fifty (50) feet in width.

A botanical survey (Gordon M. McBride, Ph.D., dated June 21, 2000) was conducted for at least portions of the site of the boundary line adjustment project (see Exhibit No. 6). This study concluded that while no rare or endangered plants or Pygmy Forest Community were discovered on the Bonham property, the site did contain ESHA in the forms of riparian plant community and sand dune habitat areas bracketing Big Gulch Creek (Glennen Gulch) and Cook's Beach, respectively, on the northern portion of Parcel 1. These areas, however, were not mapped by the botanical investigator. This decision was based on the rationale that future development would not be allowed on these portions of Parcel 1. As a mitigation measure, the botanist recommended that if future development is proposed on Parcel 1 in the vicinity of the riparian plant community, that the boundary of the riparian ESHA and a suitable buffer area be determined for the area. No provision for the delineation of the extent of sand dune environmentally sensitive areas was recommended in the report as the preparer assumed that no development would be allowed on the beach areas.

The report further explained that proposed Parcel 3 was not included in the botanical survey as the site was already developed with a single family dwelling and no further development was proposed as part of the boundary line adjustment. Similar to the recommendation for the development in or near the riparian plant community on Parcel 1, the report recommended that a botanical survey be required as part of the planning process should any development be proposed on adjusted Parcel 3. Prior to the Commission reviewing the project on appeal, the County approved the boundary line adjustment and included Condition No. 7 which reads as follows:

Notes shall be placed on the deeds and legal descriptions stating the following:

- A) 'Future development on Parcel 1 as proposed by this Coastal Development Boundary Line Adjustment shall require the delineation of the boundaries of sand dunes and riparian vegetation occurring on the property as identified in the botanical survey dated June 21, 2000, prepared by Gordon E. McBride, Ph.D., on file at Planning and Building Services.'
- B) 'Future development on Parcel 3 as proposed by this Coastal Development Boundary Line Adjustment shall require the preparation of a botanical survey to identify any environmentally sensitive habitat areas that may occur on the parcel.'
- C) 'Future development on Parcels 1 and 3 may be subject to the restrictions for the protection of environmentally sensitive habitat areas as identified in botanical surveys prepared for these parcels.'

It is not unreasonable to assume that future development on Parcel 3 may occur given the small size of the existing residence and its location within only a few feet of the blufftop edge. Present or future owners may someday wish to build a newer, more substantial residence in a more stable location farther away from the bluff edge. Accordingly, given that there is a practical need to determine whether a suitable building site will exist on the parcel as proposed to be adjusted, even though a residence already exists, a second wetlands assessment was prepared at the request of the Commission (Wetlands Research Associates, Inc., March, 2001) for proposed Parcel 3.

Based upon the wetlands definition contained in both the Coastal Act and the LCP, the study reported that a total of six wetland areas totaling 3.44 acres of wetlands were found on the 17.13-acre property in the form of pocket wetlands ranging from approximately 0.03 to 0.34 acre in size (see Exhibit No. 6).

LUP Policy 3.1-7 and Coastal Zoning Ordinance Section 20.496.020 require that a buffer area be established adjacent to all environmentally sensitive habitat areas (ESHAs) to provide sufficient area to protect the areas from significant degradation resulting from future developments. The default width of the buffer area shall be a minimum of 100 feet measured from the outside edge of the ESHA. The LCP includes a provision for reducing the buffer width down to as small as 50 feet provided the applicant can demonstrate, after consultation and agreement with the

California Department of Fish and Game, and the County planning staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. No evidence supporting a reduced buffer has been submitted at the time of the writing of this report. Accordingly, a minimum 100-foot buffer width from the outside edge of the wetland areas is indicated for this project.

The wetland assessment included a map, identified as "Figure 3," illustrating several areas exceeding one acre in size outside of both ESHAs and their buffers that are located on Parcel 3. Accordingly, based on the conclusions of the two environmentally sensitive area assessments, the boundary line adjustment as proposed would not result in any parcels located entirely within an ESHA or buffer area. Further, all parcels resulting from the lot line adjustment would contain adequate building sites located outside of the buffer areas.

Thus, the Commission finds that the boundary line adjustment as conditioned would be consistent with the LCP policies for the protection of environmentally sensitive habitat areas in that: (1) the presence and extent of ESHAs on the site have been studied and mapped; (2) no resulting parcel will be located entirely within an ESHA; (3) no resulting parcel will be located entirely within a buffer area; and (4) areas will remain on all resulting parcels to allow for development of adequate building sites, as required under LUP Policies 3.1-1, 3.1-7, and 3.1-32, and Coastal Zoning Ordinance Sections 20.496.015, 20.532.060, and 20.532.100.

G. Geologic Stability

1. Summary of LCP Provisions

LUP Policy 3.4-1 states, in applicable part:

The County shall review all applications for Coastal Development permits to determine threats from and impacts on geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, expansive soils and subsidence and shall require appropriate mitigation measures to minimize such threats. In areas of known or potential geologic hazards, such as shoreline and bluff top lots and areas delineated on the hazards maps the County shall require a geologic investigation and report, prior to development, to be prepared by a licensed engineering geologist or registered civil engineer with expertise in soils analysis to determine if mitigation measures could stabilize the site. Where mitigation measures are determined to be necessary by the geologist or registered civil engineer the County shall require that the foundation construction and earthwork be supervised and certified by a licensed engineering geologist, or a registered civil engineer with soil analysis expertise to ensure that the mitigation measures are properly incorporated into the development.

Zoning Code Section 20.500.010 states that development shall:

- (1) *Minimize risk to life and property in areas of high geologic, flood and fire hazard;*
- (2) *Assure structural integrity and stability; and*
- (3) *Neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

2. Discussion

The project site comprises three parcels totaling approximately 35 acres in size that make up the uplifted marine terrace headland known as Bourns Landing. The western margin of the property consists of over a mile of shoreline cliff that drops roughly 50 feet to the ocean. No geologic information about the stability of the bluffs or the bluff retreat rate is included in the permit application or elsewhere in the local record for the project. Parcel 3 is currently developed with a small single family residence and a detached garage/outbuilding. No structural improvements are proposed in association with the requested boundary line adjustment.

LUP Policy 3.4-1 requires that the authorizing agency review all applications for coastal development permits to assess applicable geologic stability threats from and to the site from the proposed development. Appropriate mitigation measures to minimize such threats are to be identified and required. In areas of known or potential geologic hazards, geologic investigations and reports are required to be prepared prior to development. If mitigation measures could stabilize the site, and are determined to be necessary, the measures are to be supervised and certified to ensure that they are properly incorporated into the development. Furthermore, Section 20.500.010(A)(3) requires that development within the coastal zone, “(n)either create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.”

The Commission notes that since: (a) the proposed development before the Commission does not propose any physical development; (b) the proposed adjustment of the configuration of the parcels would not reduce the potential maximum blufftop setback that could be applied to future development on any of the three parcels involved in the adjustment; and (c) the depths of the proposed parcels between the bluff edge and the road, at roughly 600 to over 1,000 feet, would allow for very large blufftop setbacks relative to other shoreline development, the proposed project does not give rise to the need to conduct a detailed geologic analysis at this time to assess the exposure of persons and property to geologic hazards. Further, although the size of the property is relatively large, the extent and scope of the development, in terms of the changes that would result from the development and its effects on geologic stability, is relatively small. Therefore, the Commission finds that, as discussed above, the project as conditioned is consistent with LUP Policy 3.4-1 and Coastal Zoning Code Sections 20.500.010.

H. Visual Resources

1. Summary of LCP Provisions

Policy 3.5-1 states in applicable part:

The scenic and visual qualities of Mendocino county coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting.

Policy 3.5-3 states in applicable part:

The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as 'highly scenic areas'...Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Navarro River and the north boundary of the City of Point Arena as mapped with noted exceptions and inclusions of certain areas east of Highway 1...All proposed divisions of land and boundary line adjustments within 'highly scenic areas' will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies. [emphasis added]

Policy 3.5-4 states:

Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open area shall be avoided if an alternative site exists... Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms.

Coastal Zoning Ordinance Section 20.504.015 states, in applicable part:

(C) *Development Criteria.*

(1) *Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes...*

- (3) *New development shall be subordinate to the natural setting and minimize reflective surfaces...*
- (4) *All proposed divisions of land and boundary line adjustments within highly scenic areas shall be analyzed for consistency of potential future development with the regulations of this Chapter, and no division of land or boundary line adjustment shall be approved if development of resulting parcel(s) would be inconsistent with this chapter.* [emphasis added]
- (5) *Buildings and building groups that must be sited in highly scenic areas shall be sited: (a) Near the toe of a slope; (b) Below rather than on a ridge; and (c) In or near a wooded area...*
- (6) *Minimize visual impacts of development on terraces by the following criteria: (a) avoiding development in large open areas if alternative site exists; (b) Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms...*

2. Discussion.

Visual Setting

The development is located in a rural residential area north of the unincorporated town of Gualala within a designated highly scenic area along the western side of Highway One. The subject site is situated on a large undulating grassy coastal terrace with scattered tree and shrub cover that slopes gently toward the bluffs. The site affords distant blue water views to motorists traveling on County Road 526. Travelers are also provided oblique views of the scenic offshore rocks and headlands of Fish Rock to the north and Robinson's Reef to the south. Highway One is separated from the site to the east by intervening parcels and a road cut through a low ridge. Consequently, there are virtually no views through the site from Highway One as it passes to the east of the subject site.

In its existing 5.3-acre configuration, northernmost Parcel 1 occupies the southern blufftop and eastern streamcourse ravine above the crescent-shaped inlet known as Cooks Beach. Thick vegetation covers the riparian northern half of the parcel, becoming more open on the scrub-shrub southern half of the parcel. As proposed, the southern property line of the parcel would be shifted further southeasterly across neighboring Parcel 2 to more than double the parcel size to 11.66 acres. The area to be added to Parcel 1 from Parcel 2 consists mainly of more grass and scattered shrub covered bluff, but would also include portions of the two Monterey cypress windrows located at the center of existing Parcel 2.

The proposed adjustment would also add a major portion of existing Parcel 2 onto the more southeasterly Parcel 3, nearly doubling its size from its current 8.7 acres to 17.13 acres. The portions of Parcel 2 that would be added onto Parcel 3 are the flattest and most open of the

project site, consisting of the former sawmill and log decking areas. This area will be merged onto the more undulating and tree covered terrain of existing Parcel 3.

After the above-described lot line adjustments are undertaken, the resulting Parcel 2 would take the form of a relatively deep ($\pm 1,200$ ft.) and narrow ± 100 -200 ft.) lot, reduced to less than a third of its existing size, from 21.2 acres to 6.4 acres. This area, while consisting primarily of the flat and open grass and shrub covered blufftop, would also include remaining portions of the two Monterey cypress windrows transferred onto Parcel 1.

Analysis of Conformance of Boundary Adjustment to Visual Resource Policies

As indicated above, the subject site is located within the highly scenic area designated by LUP Policy 3.5-3 constituting those portions of the coastal zone lying on the west side of Highway 1 between Anchor Bay and the townsite of Gualala. Although the size of the property is relatively large and highly visible, the extent and scope of the development, in terms of the changes that would result from the boundary line adjustment and its effects on visual resources, are relatively small. Nevertheless, while the boundary line adjustment itself will not affect the visual character of the area, future development on the proposed parcels could adversely affect the visual quality of the project site and the surrounding area.

To find consistency with the LCP visual policies, a proposed project, including future development at the site, must be measured against criteria or tests set forth within the Land Use Plan and implementing zoning regulations. As applied to the proposed project and its particular setting (i.e., not involving ridgeline development), the various policies require that the proposed boundary line adjustment must be analyzed for consistency of potential future development with the following tests:

- Future development must be sited and designed to protect views to and along the ocean and scenic coastal areas including designated highly scenic area inland of Hwy 1;
- Future development must be sited and designed to minimize the alteration of natural land forms; and
- Future development must be subordinate to the character of its setting. To achieve such a result, the LCP policies further prescribe that future development: (a) be sited near the toe of a slope, (b) be sited below rather than on a ridge, (c) be sited in or near the edge of a wooded area, and (d) avoid being placed in the middle of a large open area if an alternative site exists, and (e) be clustered near existing vegetation, natural landforms, or artificial berms.

As noted previously, the project site is located west of the highway on a gently sloping, terrace pasture with scattered tree and shrub cover. Topographic relief consists of several small rises and swales of less than ten feet in elevation difference. All three parcels, as adjusted, contain wooded areas or natural landforms that would provide opportunities for screening or clustering future development to reduce impacts to visual resources consistent with the criteria of Coastal

Zoning Code Section 20.504.015(C). Moreover, the use of natural berms or additional landscaping could be employed in future site development to further reduce the visual intensity of structural improvements without impacting views to and along the coast.

With the reconfiguration of the parcels, Parcels 2 and 3 would occupy portions of the large headland that projects westward from the approximate center of the Bourns Landing site. Under the existing configuration, this headland is occupied only by Parcel 2. The LCP allows just one home per parcel in this area and throughout most of the Mendocino coastal zone. The concern is raised that with this reconfiguration of the parcels, it would be possible to locate two homes out on the headland instead of just one, with one house on Parcel 2 and a relocated house constructed on Parcel 3. Homes located out on the open headland may be visually prominent rather than subordinate to the character or its setting and affect views.

Although it would certainly be possible to create such a site plan that locates two houses out on the headland under the proposed reconfiguration of parcels, coastal development permits for the houses could only be approved if such developments were found to be consistent with the visual resource protection policies of the LCP. Policy 3.5-4 of the certified LUP and Coastal Zoning Ordinance Section 20.504.015 set forth criteria for development in highly scenic areas such as Bourns Landing. Among other requirements, these policies specify that development in highly scenic areas shall provide for the protection of coastal views from public areas, buildings that must be sited in highly scenic areas shall be sited in or near a wooded area, and avoid development in large open areas on terraces if alternative sites exist including clustering the development near existing vegetation, natural landforms or artificial berms. Under the proposed reconfiguration of parcels, there are existing vegetated areas and landforms away from the headland that could be used to minimize the visual impact of future homes, consistent with the requirements of LUP Policy 3.5-4 and Coastal Zoning Ordinance Section 20.504.015. The County and the Commission on appeal would have the opportunity to evaluate any future applications for homes on the parcels for conformance with these policies. Thus, the reconfiguration of the parcels would not force the development of two homes on the headland.

Thus, the Commission finds that the project as conditioned is consistent with LUP Policies 3.5-1 and 3.5-4 and Coastal Zoning Code Section 20.504.015(C), as future development of the parcels as adjusted could be sited and designed to protect views to and along the ocean and scenic coastal areas, minimize the alteration of natural landforms, and be subordinate to the character of its setting.

I. Rezoning Procedures / Uncertain Zoning Boundary Determinations

1. Summary of LCP Provisions

LUP Policy 3.7-3 states:

Visitor serving facilities and proposed sites where the Coastal Commission has approved the issuance of permits are designated on the land use maps, and are reserved for those visitor accommodations as defined in Chapter 2. Provision has

also been made for the following visitor services: boat launching or rental, visitor-oriented and handicraft shops. Precise intensity of visitor accommodations and development standards shall be specified by zoning regulations so the developments will be compatible with the natural setting and surrounding development. Visitor serving facilities which might occur in commercially designated areas have not been specifically designated, except for the Mendocino Town Plan. (See Appendix 10 for listing of privately operated visitor serving facilities.) [emphasis added]

LUP Policy 3.7-4 states:

*Proposed sites or areas for additional visitor serving facilities are designated and reserved by a number indicating a category of VSF described in this section subject to the granting of a conditional use permit (*C). Precise intensity of the proposed visitor accommodations and development standards shall be specified in the Zoning Regulations and regulated so that the use will be compatible with existing uses, public services and environmental resources. Any visitor serving facility not shown on the LUP Maps shall require an LUP amendment except in Rural Village (RV) and Commercial (C) Land Uses... [emphases added]*

LUP Policy 3.7-4.1 states, in applicable part:

Transference from one location to another of a visitor serving facility designation shown on the Land Use Plan maps shall require a Land Use Plan amendment...

Section 20.304.045 of the Coastal Zoning Code states, in applicable part:

Where uncertainty exists as to the boundaries of any district shown on the zoning maps, the Coastal Permit Administrator shall apply the following rules to resolve such uncertainty:

...

- (E) *Where further uncertainty exists, the Planning Commission, upon written request or on its own motion, shall determine the location of the boundary in question, giving due consideration to the location indicated on the zoning map and the purposes set forth in the base zone district regulations.*

Alternately, Chapter 20.548 of the Coastal Zoning Code states, in applicable part:

The purpose of this chapter is to provide procedures to change the boundaries of districts or change any other provisions of this Division. (Sec 20.548.005)

...

Administrative Review. The Planning and Building Services Department shall process the application for amendment through the project review process in accordance with Sections 65800 through 65993 of the Government Code,

Sections 21000 through 21176 of the Public Resources Code, Sections 13500 through 13577 and Sections 15000 through 15387 of the California Administrative Code.

Planning Commission Hearing. After Administrative Review, the Planning Commission shall hold a duly noticed hearing on the application for amendment.

Action by the Planning Commission. After the hearing, the Planning Commission shall render its decision in the form of a report incorporating a written recommendation to the Board of Supervisors.

Action by the Board of Supervisors. After holding a noticed public hearing, the Board of Supervisors may approve, modify, or disapprove the recommendation of the Planning Commission...(Sec. 20.548.020(A) - (D))

...

Approval of the application for amendment shall not become effective until the amendment has been approved and certified by the California Coastal Commission. (Sec. 20-548.020(G))

2. Discussion.

The project site lies within the LCP's Iversen Road to Sonoma County Line Planning Area. All three parcels are planned and zoned Rural Residential – 1 Unit Per 5 Acres, with Planned Unit Development and Visitor Accommodations and Services – Inns, Motels, Hotels, 20 Units Maximum Combining Zones (RR:L-5:PD:*2C) (see Exhibit Nos. 4 and 5). The policies of the County's certified LCP provide that visitor accommodation and service facilities can be located outside of commercially designated areas where the County has designated selected sites with an asterisk (*) symbol on the land use maps. When the original land use maps were certified, the County applied such an asterisk to the entire Bourns Landing property, based on the understanding that the property comprised only one parcel. Only later, while investigating the property's chain of title for the requested Certificate of Compliance, the County subsequently determined that three legal parcels comprised the Bourns Landing site. When this situation came to light, the County concluded that continued application of the designation to all three parcels would provide for the potential development of three separate visitor serving facilities with the potential for as many as 60 inn units being allowed in the area.

In a cover letter for the subject lot line adjustment before the County dated February 1, 2000 and prepared by Bud Kamb, agent for the applicant, the following observation was made with regard to the project site's land use plan and zoning designations:

Please note that the *2C is stamped almost at the center of the property. When the land use designation and zoning was placed on the property the county and the Coastal Commission new (*sic*) the property was under one ownership and assumed it was one parcel. We believe the *2C should apply to the new Parcel 1 (11.66 acres). The most northerly parcel. This is an area where there are beaches

and an access location... (The) Zoning Map shows the zoning as RR: L-5(PD) (RR-PD) with the *2C is place a little further southwest on the map.

Having previously realized that such intensity of development would be excessive for the size of the area its location, and available supporting facilities, the County Permit Administrator responded to Mr. Kamb's request by including in the approval of the lot line adjustment a Condition Number 6 which read:

A note shall be placed on the deeds and legal descriptions stating that the “*2C” designation is restricted to Parcel 1 as identified on the “Exhibit Map” on file with the Department of Planning and Building Services.

The County stated that it attached Condition No. 6 to clarify the location of the pre-existing Visitor Accommodations and Services – Inns, Hotels, and Motels, 20 Units Maximum Combining Zone (:*2C) that had been previously interpreted to apply over the whole of the project site. In this way, a three-fold intensification of potential commercial use at the site would not result.

Although the rationale behind the County's action is understandable, and arguably appropriate given conditions at the site, the action did not follow established procedure within the certified LCP to accomplish the desired outcome. The delineation of the extent of application of the *2C combining zone designation through the County's actions on the boundary line adjustment coastal development permit application purported to amend the project site's zoning. Furthermore, by applying a condition of approval requiring recordation of a deed note restricting the areal extent of the Visitor Accommodations and Services – Inns, Motels, Hotels, 20 Units Maximum Combining Zone (:*2C) designation to the bounds of the adjusted Parcel 1, commercial zoning would have been ostensibly applied to a particular land area that had not previously been recognized for such future development. Consequently, though the County states that their action served to only clarify the extent of an existing zoning combining zone designation, the County's action on the coastal development permit application purported to rezone the property even though properly noticed public hearings before the Planning Commission and/or the Board of Supervisors as prescribed in the certified LCP were not conducted.

The LCP provides two procedures for clarifying or changing the extent of LCP designations that apply to particular parcels. Coastal Zoning Code Section 20.304.045 sets forth a procedure for determining the extent of an uncertain zoning district boundary once new information had come to light. Under the provisions of Section 20.304.045, the County's Planning Commission, on its own volition or by written petition, is to review and decide the exact extent of the zoning designation in question. Alternately, the certified LCP establishes a formal LCP amendment process within Chapter 20.548 of the Coastal Zoning Code. As detailed above, this process is primarily for much more extensive changes in the certified Land Use Plan and Coastal Zoning Ordinance, and is correspondingly more complex, involving environmental review, state planning and zoning law procedures, and Coastal Commission certification criteria. By either method, the Planning Commission's and/or Board of Supervisors actions would be conducted

during a noticed public hearing where the public would have the opportunity to give testimony as to the merits of a particular zoning boundary determination or amendment. To date, no such hearing before the Planning Commission pursuant to Sections 20.304.045 or 20.548.005 of the Coastal Zoning Code occurred. By restricting the areal extent of the :*2C combining zone to adjusted Parcel 1 during an administrative hearing whose notice described only action being contemplated on the adjustment of property boundary lines, the Coastal Permit Administrator effectively approved the official location of a zoning designation without a zone boundary determination or LCP amendment.

The Commission notes that the physical construction of up to 20 visitor serving inn, hotel or motel units could have significant adverse impacts to a host of sensitive coastal resources, including public accessways, recreational opportunities, marine and water resources, highly scenic areas, and habitat areas, if the development is sited in an improper location on any of the three parcels. Consequently, setting the location for the extent of the :*2C combining zone through a permit condition of the permit approving the boundary line adjustment would be inconsistent with LUP Policy 3.7-4 which states that the *“...precise intensity of the proposed visitor accommodations and development standards shall be ... regulated so that the use will be compatible with existing uses, public services and environmental resources.”*

Accordingly, while the Commission herein makes findings and attaches conditions to the approval of the proposed boundary line adjustment project relative to its consistency with the policies of the County's LCP and the access and recreation policies of the Coastal Act, the scope of the Commission's actions do not include any determinations regarding uncertain Land Use Plan and zoning boundaries or the amendment of Land Use Plan and zoning district boundaries at the project site. The Commission finds that in order for the location or spatial extent of the Visitor Accommodations and Services – Inns, Hotels, and Motels, 20 Units Maximum Combining Zone (:*2C) to be effectively changed so as to apply solely to the bounds of proposed Parcel 1 as requested by the applicant, the County would need to: (1) authorize the Land Use Plan and zoning designation changes through an LCP amendment pursuant to the procedures established under Section 20.548.005 of the Coastal Zoning Code; and (2) submit the LCP amendment to the Commission for certification. To avoid further confusion regarding the Land Use Plan and combining zone designations' coverages, which could affect determinations regarding the compatibility of a future development proposal's compatibility with the LCP, the Commission urges the County to promptly resolve these uncertainties by processing an LCP amendment to clarify the extent of the designations prior to the granting of any further coastal development authorizations for the subject property.

The Commission finds that an LCP amendment rather than the review process established under Section 20.304.045 of the Coastal Zoning Code for determining the extent of a zoning district boundary is necessary to resolve the uncertainties because the process specified under Section 20.304.045 only pertains to the review of zoning district boundaries and not Land Use Plan designations. The certified Land Use Plan map designates the entire property for Visitor Accommodations and Services just as the certified Zoning map does, and similarly needs to be changed to resolve the confusion and ensure consistency between the Land Use Plan and Zoning Map. As the review process provided under Section 20.304.045 does not apply to a Land Use

Plan designation question, the only appropriate mechanism for clarifying the Land Use Plan designation is an LCP amendment that includes a change to the LUP designation on the LUP map.

In keeping with the intent of the original certified LCP to identify the project site as being appropriate potential development for just one 20-unit inn/hotel/motel facility, the Commission attaches Special Condition No. 7. Special Condition No. 7 requires that a deed restriction be recorded for the property noting that development of only one visitor accommodations and services facility of up to 20 inn, motel, or hotel units, and dining facilities with seating for no more than three times the number of visitor units may be developed on one of the three subject parcels. The restriction shall also include a statement that an LCP amendment specifying which of the three adjusted parcels may be developed with the visitor serving and accommodation facility shall be certified by the Commission. The Commission finds that including such a notice within property deeds will ensure that future development is consistent with the LCP.

J. Effects of Lot Line Adjustment on Subsequent Development

1. Summary of LCP Provisions

LUP Chapter 2.2 at page 28 sets the density for lands designated with a Rural Residential, 1-Acre, 2-Acre, 5-Acre, and 10-Acre (RR L-1, RR L-2, RR L-5, & RR L-10) land use classifications, respectively, as:

One dwelling per legally created parcel, or one dwelling per 40,000 sq. ft., 2 acres, 5 acres, or 10 acres, as designated on the Land Use Maps.

LUP Policy 3.9-1 provides in applicable part:

...One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and proposed development is consistent with all applicable policies of this Coastal Element and is in compliance with existing codes and health standards...

Section 20.524.010(B)(1)(a) of the Coastal Zoning Code states, in applicable part:

The new parcels to be created shall be no smaller than the minimum parcel sizes designated on the land use maps unless provided for under other provisions of this Division...

Note: The other provisions cited by Section 20.524.010(B)(1)(a) include: (1) clustering of dwelling groups on a single parcel in suitable areas; (2) planned unit development involving creation of lots smaller than the base zone minimum parcel size; and (3) other general provisions regarding substandard sized lots created before the LCP's certification. None of these provisions allow for

development at a greater density than that established under the land use plan classification for a subject property.

Section 20.436.005 of the Coastal Zoning Code states, in applicable part:

The VAS Combining District is intended to allow visitor accommodations and services to be developed on selected sites designated by an asterisk () symbol on the land use plan maps of the Coastal Element of the General Plan and Coastal Zoning Maps... A single-family residence may be developed in conjunction with or prior to the establishment of visitor accommodations and services if the site/parcel is not preempted for VAS facilities by such action. Preemption analysis will be performed prior to approval of a development permit...*

Section 20.436.030 of the Coastal Zoning Code establishes the maximum density for Visitor Accommodations and Services Combining Districts, stating in applicable part:

One dwelling unit per parcel until a visitor use is established. Thereafter, as provided in the base zone. Densities for the following categories shall be based upon environmental constraints and conformance with the regulations of this Division with density not to exceed those limits listed below:

- (A) *Maximum visitor unit density per category as noted below: ...*
 - (1) *Inns...*
 - (b) *Inn --- *2 or *2C: 20 guest rooms or suites. Dining facilities for guests shall not exceed three (3) chairs per guest room or suite.*
 - (2) *Hotel --- *2 or *2C: 20 guest rooms or suites. Dining facilities for guests shall not exceed three (3) chairs per guest room or suite.*
 - (3) *Motel --- *2 or *2C: 20 guest rooms or suites...*

2. Discussion.

The subject project site encompasses three parcels of approximately 5.3, 21.2, and 8.7 acres in size, totaling about 35 acres. All three parcels are planned and zoned Rural Residential – 1 Unit Per 5 Acres, with Planned Unit Development Combining Zone (RR:L-5:PD). In addition, when the County's LUP was certified in 1985, a Visitor Accommodations and Services – Inns, Motels, Hotels, 20 Units Maximum Combining Zone designation (*2C) was applied to the project site. At that time, the County believed the property to consist of only one legal parcel. Only later, while investigating the property's chain of title for the requested Certificate of Compliance, the County subsequently determined that three legal parcels comprised the Bourns Landing site.

As discussed further in Findings Section IV.I, below, in light of the discovery of multiple parcels at the site, uncertainty currently exists as to the exact extent of the *2C designation, as the County has yet to conduct public hearings required by its LCP to designate which one, if any, of the three parcels is the most appropriate site for the *2C designation. Notwithstanding the

current uncertainty regarding the application of the Visitor Accommodations and Services – Inns, Motels, Hotels, 20 Units Maximum Combining Zone designation, for purposes of this analysis it is assumed that one of the three parcels has been so designated. Table 1, below, summarizes the change in parcel size that would result from the proposed adjustment. Table 2 summarizes the difference in development potential before and after the proposed lot line adjustment.

Table 1: Pre and Post Boundary Line Adjustment Parcel Sizes (Acres)

	Parcel 1	Parcel 2	Parcel 3	Total Acreage
Before Adjustment	5.30	21.20	8.70	35.20
After Adjustment	11.67	6.40	17.13	35.20

Table 2: Pre- and Post- Boundary Line Adjustment Ultimate Development Potential

Development Type	Development Potential	
	Before Adjustment	After Adjustment
Total No. Housing Units	3 (1 per parcel)	3 (1 per parcel)
Total No. Lots by Merger and Resubdivision of all Lots	7 (@ 1 lot per 5 acres RR-5 density)	7 (@ 1 lot per 5 acres RR-5 density)
Total No. Lots by Subdivision of Individual Parcels	6 (@ 1 lot per 5 acres RR L-5 minimum parcel size)	6 (@ 1 lot per 5 acres RR L-5 minimum parcel size)
Visitor Accommodations and Services	≤ 20-unit inn, hotel, or motel; dining facilities with seating for ≤ 3 times number of visitor units (on 1 of the 3 parcels)	≤ 20-unit inn, hotel, or motel; dining facilities with seating for ≤ 3 times number of visitor units (on 1 of the 3 parcels)

Pre-adjustment Ultimate Development Potential

As currently configured, the three subject parcels could each be developed with one housing unit pursuant to LUP Section 3.9-1, for a total of three single-family residences. In addition, an inn or hotel of up to 20 units and seating for no more than three times the number of visitor units, or motel of up to 20 units could be developed on any one of the parcels. If the three parcels were merged and re-subdivided, no more than seven parcels could be created based upon the maximum density and minimum parcel sizes permitted under the properties' RR L-5 land use designation. Conversely, if the three parcels were not merged, only the 21.2-acre Parcel 2 would be further subdividable into no more than 4 lots, for a total of 6 parcels. Provided the County were to sustain the application of the *2C Combining District designation after the subdivision, a 20-unit inn, hotel, or motel could similarly be developed on one of the maximum seven or six resulting parcels, depending upon the particular subdivision scenario. Any and all of these developments would require a coastal development permit, conditional use permit, and/or subdivision map authorizations issued by the County of Mendocino, whose approval or conditional approval would be appealable to the Commission.

Post-adjustment Ultimate Development Potential

The proposed lot line adjustment would shift the common internal property lines between Parcels 1, 2 and 3, resulting in three parcels of approximately 11.6, 6.4, and 17.1 acres in size. The three resulting parcels could each be developed with one housing unit pursuant to LUP Section 3.9-1, for a total of three single-family residences. In addition, an inn or hotel of up to 20 units and seating for no more than three times the number of visitor units, or motel of up to 20 units could similarly be developed on any one of the parcels following the lot line adjustment. Identical to the existing situation, if the three adjusted parcels were later merged and re-subdivided, no more than seven parcels could be created based upon the maximum density permitted under the properties' RR L-5 land use designation. Again, if the three adjusted parcels were not merged, only the Parcels 1 and 3 would be further subdividable into no more than 2 lots and 3 lots, respectively, for a total of 6 parcels. Assuming that the County were to sustain the application of the *2C Combining District designation after the subdivision, a 20-unit inn, hotel, or motel could similarly be developed on one of the maximum seven or six resulting parcels, depending upon the particular subdivision scenario. Any and all of these developments would require a coastal development issued from the County of Mendocino, whose approval or conditional approval would be appealable to the Commission.

Effects of Lot Line Adjustment on Development of Visitor Accommodations and Services Facilities on Parcel 1

The applicant indicates that they intend in the future to build an inn on Parcel 1, as they believe that is the parcel most suited to inn development as it will contain the accessway to Cook's Beach. As discussed below, the proposed lot line adjustment would expand parcel 1 and provide flexibility for designing an inn more consistent with the visual resource policies of the LCP. However, even in its current configuration, an inn could be built on Parcel 1.

As currently configured, existing Parcel 1 contains approximately 5.3 acres of generally open, gentle seaward sloping terrace pastureland on the south and east sides of Cooks Beach (see Exhibit No. 8). Constraints on development of this site include avoidance of any unstable blufftop edges and environmentally sensitive areas, setbacks from property lines, designing structures to minimize impacts to visual resources, and the location of areas suitable for placement of sewage disposal fields. For purposes of this analysis, the Commission assumes the following restrictions would apply to the development on Parcel 1:

- 100-foot structural setback from the edge of riparian vegetation within the Glennen Gulch corridor;
- 100-foot structural setback from the blufftop margins above Cooks Beach;
- 30-foot front and side yard building setbacks from County Road No. 536 frontage and Parcel 2;
- No placement of primary or secondary sewage disposal fields within 100-feet of the blufftop;
- Limit building heights to one-story, not to exceed 18 feet above grade; and
- Locate buildings at bases of hillside, near screening vegetation, and away from open areas and hilltops.

Based on these constraints, suitable building sites for a residence and/or visitor-serving facility would be restricted to an approximately 1-acre "V"-shaped area in the southeastern corner of the parcel. Though its design would likely require that the units be modest in size and attached or clustered rather than detached, it is feasible that a inn/hotel/motel of no more than 20 units and required off-street parking and sewage disposal fields could be developed within such a building envelope. However, given the limited area available for structural improvements, it is doubtful that commercial dining facilities with seating for no more than three times the number of visitor units could concurrently be developed on existing Parcel 1.

The proposed boundary line adjustment would result in approximately 6.36 acres being added to Parcel 1 from portions of Parcels 2 and 3. As described in Findings Section IV.B, the adjusted area similarly consists of generally open, gentle seaward sloping terrace pastureland with the addition of portions of two windrows of Monterey cypress and several undulations within the terrain not generally found on other portions of the site.

As discussed above, the addition of the adjusted area onto Parcel 1 while not significantly increasing the amount development density of the property other than its potential to be subdivided into two parcels, would give substantially greater flexibility to the location of residential and commercial development at the site. Given the same development constraints assumed for existing Parcel 1 stated above, the adjustment would effectively quadruple the amount of area suitable for the placement of structural improvements. With approximately 5 to 6 acres available, development of a 20-unit visitor-serving facility, single-family residence, and ancillary parking and sewage disposal areas could easily be accommodated. With regard to visual resource implications, the adjusted area would provide several depressed and/or vegetated area where buildings could be placed to minimize their effects on coastal views.

Conclusion

The subject lot line adjustment proposes to reconfigure the interior boundaries of three adjoining legal parcels. The adjustment would not result in an increase in the amount of development density that would allow for an increase in the overall number of parcels, building sites, or land uses on the property attainable with the existing parcel configurations. To do so would require County approval of a zoning and/or local coastal plan amendment subject to certification by the Commission.

The lot line adjustment would result in significant lot area being added to existing Parcel 1. Provided the County determines that the application of the Visitor Accommodations and Services Combining District, - Inns, Motels, Hotels, 20 Units Maximum (:*2C) designation is appropriate for this parcel, flexibility in the site design of such a visitor-serving facility would be greatly enhanced by the adjustment. In addition, as the adjusted area contains several areas with topographic breaks and vegetation that could aid in screening the appearance of inn/hotel/motel structures, impacts to visual resources would likely be further reduced compared to that which would result from such development on the parcel in its existing configuration.

K. California Environmental Quality Act (CEQA).

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission incorporates its findings on conformity with LCP policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed herein, in the findings addressing the consistency of the proposed project with the certified LCP, the proposed project has been conditioned to be found consistent with the County of Mendocino LCP and the access and recreation policies of the Coastal Act. Mitigation measures which will minimize all adverse environmental impacts have been made requirements of project approval. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

V. EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Proposed Boundary Line Adjustment Project Plans and Project Narrative
4. Excerpt, Land Use Plan Map No. 31 "Gualala"
5. Excerpt, Zoning Map No. 70H – "Gualala Quadrangle"
6. Environmentally Sensitive Area Assessments
7. Building Site Area Under Existing and Proposed Parcel Configurations
8. Review Agency Correspondence
9. General Correspondence

ATTACHMENT A:

STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director of the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.